illustrated by the things that he did and said and wrote and printed, and his conduct in the past, so that when you accuse him of a certain thing in the year 1949, let us say, the best way of telling exactly what the truth was is to go back and find out what he did before, what he said and what he thought and expressed on the subject at hand.

The Court: The subject at hand.

Mr. Gladstein: Yes, your Honor. Now it so

—Tr. Tr. 6573—

happens that one of the issues in this case is the question of the intention of each and every defendant—the question whether any of the defendants intended to say or print or do anything that advocated the overthrow of the Government of the United States by force and violence.

The Court: We will not go into the war in Spain.

Mr. Gladstein: But my point is this: it is no longer any secret that we are dealing here with a question of ideas, and surely the best evidence of a man's understanding of ideas, be it philosophy, science, economics, or whatever it may be, is to be found in his application of those ideas, in his expression of those ideas.

The Court: Now Mr. Gladstein, you know you have heard me say many times that I have the problem here of drawing the line. It is obvious that if I permit these defendants to bring in everything they ever said, everything they ever wrote, all their conduct in all the matters having to do with anti-Semitism, arguing matters for the Negroes, being in support of the Republican government in

Spain, being opposed to Chiang Kai Chek, and the Chinese government, and so on, we will be here for an indefinite period, and I have felt that I was drawing the line at the proper place. Now one of those places is that the war in Spain is out.

—Tr. Tr. 6574—

Mr. Gladstein: Your Honor, I agree that all of the things that the defendants did and said to fight anti-Semitism and Jim-Crowism and other evils could not possibly be brought before this Court because it would take years.

The Court: And we might get our attention diverted from the real issue.

Mr. Gladstein: No, no, it would certainly take years to produce the proof of what these men did fighting these things.

The Court: You see, you always try to get a little argument in. I suppose there is no use of my trying to stop you because you go right on just the same. I don't recall believe that it is going to do you any good.

Mr. Gladstein: Let me say this: I believe a certain substantial amount of evidence should be permitted, not unlimited, to show the conduct and expressions of these men on certain basic issues in the past, and that is why I said it wouldn't be possible in a trial to allow each defendant to produce all of the things and statements for which he is responsible and for which he is entitled to credit on many of the things he has devoted his life to. In fact, we couldn't and wouldn't because

not only would it be a wonderful and honorable thing to do but it would be—

—Tr. Tr. 6575—

The Court: You keep praising them.

Mr. Gladstein: However, the point I make is this: You say you wish to impose a limitation of degree, which is all right.

The Court: I say I am doing it.

Mr. Gladstein: But I want to point out that you are imposing a restriction of subject, not of degree. You are not only not permitting a certain amount of testimony on a certain subject and saying, "Well, that is reasonable, that is enough;" in fact, your ruling shuts off the possibility of any proof whatsoever on one of the most important aspects of the lives of these men and of the party which they worked with and worked for and represented, and therefore I submit—

The Court: Now Mr. Gladstein, I really wish you wouldn't argue any more. You know, when I speak mildly as I do you gentlemen go right ahead and don't pay any attention to me. I don't like shouting at people and wrangling. I don't think it makes a person effective to do that. Why don't you let it go at that? I understand what I am doing here. If I am wrong the law provides the remedy, but I am doing it very definitely and decisively. You say no evidence was allowed. What have we been doing here for the last few days? Reading paper after paper after paper of his own documentation showing what he thought and what he

—Tr. Tr. 6575-A—

was doing and all that. I try to be liberal about it, but I see difficulties ahead in going into the war in Spain. I want to avoid the multiplicity of issues and confusion of the issues. I can see no profit to anyone in that, and so I am going to rule it out.

—Tr. Tr. 6576—

Mr. Sacher: I should, with the Court's permission—

The Court: Excuse me just a second here.

(A pause.)

Mr. Sacher: I should just like, with the—

The Court: Mr. Thompson?

Defendant Thompson: I am very vitally interested in this question of Spain and might I—

The Court: Do you think it's wise, when you've got a lawyer representing you here, to rise this way to address the Court?

Defendant Thompson: Well, I would just like to point out to your Honor that it is not a question of the activities of our Party or of one or two defendants that are involved when you rule out the question of Spain. The experience of Spain has very profoundly influenced the position of our Party towards many questions, the problem of the state and many other questions, that are vital and essential in any presentation of the development of the line of policies of our Party, and that is what you are ruling out when you say you are ruling out the question of Spain.

The Court: I don't intentionally circumscribe the defendants' proof. It seems to me that there should be ample opportunity for them to show that their intention was an intention for peaceful reform and

—Tr. Tr. 6577—

change by legal means without having to go into the proceedings in Spain and all the literature that they may have issued about that. Now, I may be wrong about that, but that is the best determination I can make of the subject.

So, let us get on.

Defendant Dennis: Might I address the Court?

The Court: Yes, Mr. Dennis.

Defendant Dennis: Very briefly. In addition to the arguments I made on this question yesterday, I would like to call to the attention of the Court that this proffer of evidence, as well as the issues which we are bringing forward in connection with Spain, concern themselves very directly with our understanding of and application of the principles of Marxism-Leninism, not only in general but on the question that has been raised in the indictment in respect to force and violence. And the matters that we wish to bring before the attention of the jury and the Court would demonstrate most clearly who advocates and promotes force and violence, and our position in this respect in our defense of democratic liberties including a democratic republic and I would urge the Court to reconsider its ruling on this question, which is not a technical matter.

Defendant Davis: Also, your Honor, I would like to say something.

—Tr. Tr. 6578—

The Court: Just a moment. Just a moment, if you please, Mr. Davis.

(A pause.)

The Court: Yes, what have you to say?

Defendant Davis: Apparently—

The Court: Before you say very much I want to make a little observation. You know, you gentlemen have been bobbing up here, saying things and doing things that I did not consider were very proper to do, some of them rather—well, I won't characterize them because we all remember what you and your other defendants have said and done. This is the first time you have got up. Now, I have determined here that I am going to have an orderly trial. I don't think in the early stages that any of you gentlemen really thought I meant what I said or that I would succeed.

Mr. Gladstein: That is objected to.

The Court: That's all right. But it appears that I have succeeded rather well, and that the proceedings are becoming more regular and orderly every day.

I have penalties at my disposal, if the defendants insist upon interrupting the proceedings and holding forth, although they have lawyers to represent them, and I dislike very much doing some of the things that the law places it in my power to do.

—Tr. Tr. 6579—

Now, I just want you to remember that. I believe that the best way to go ahead here is for the defen-

dants to just sit there and let your lawyers represent you instead of jumping up every once in a while to get your own comments in, and your own views, and I tell you, for your own good, that I recommend that.

Defendant Davis: It is pretty hard for the defendants to sit here like a bump on a log, as you say, while a whole lot of rulings are made which are practically cutting the guts out of what our Party stands for. This Court claims—

The Court: I consider that an extremely offensive statement.

Defendant Davis: Well, the whole trial is offensive to me and should have been thrown out a long time ago.

The Court: No defendant gets very much pleasure out of a criminal trial.

Defendant Davis: Of course, and I don't see what pleasure the Government should get in bringing this ridiculous and stupid trial in the first place.

The Court: Now, Mr. Davis, do you realize that you may be forcing me to remand you during the remainder of the trial?

Defendant Davis: Well, I cannot help that. All

—Tr. Tr. 6580—

I want to do is to say the truth, that is all.

The Court: Oh, you can help it. You can help it.

Defendant Davis: And if you wanted the truth you would let our Party say what it teaches and advocates, in Spain and elsewhere.

The Court: If you maintain yourself in an orderly way, you will avoid that. If you insist upon

being disorderly, I shall remand you for the remainder of the trial.

Let's get on.

. . . . . .

—Tr. Tr. 6838—

New York, June 2, 1949

. . . . . .

The Court: You know, Mr. Gladstein, that I have indicated my desire not to hear arguments unless I desire them.

Mr. Gladstein: I do, your Honor, but I thought that that was limited simply to hearing argument. Now it seems to me, and I submit, that the Court is now making it plain that it no longer wishes to hear evidence from the defendants, and that began to be true when the defense began to put in its case.

The Court: Mr. Gladstein, we have been getting along very nicely here the last day or two with that atmosphere of calm that I think is suitable for a

—Tr. Tr. 6839—

trial of any issues and even more so for the trial of the issues here, but you seem disposed to start the same old business up again. I wish you wouldn't do it.

Mr. Gladstein: I suppose your Honor's remark had to do with the fact that I was absent the last two days.

The Court: No, I thought you made some comments that seemed to me rather offensive and unnecessary.

Mr. Gladstein: I assign as misconduct your Honor's remarks.

The Court: Well, you may.

Mr. Gladstein: Particularly, your Honor just said something about "the same old business." I assign that remark as misconduct and ask your Honor to advise the Jury to disregard it.

The Court: Both of your motions are denied.

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—Tr. Tr. 6843—

* * * * *

Q. Mr. Gates, you are familiar with the pages 160 to 172 of Exhibit 30, are you not? A. I am.

Q. Now I ask you what, during the period covered by the indictment, was your understanding of the expression "converting the imperialist war into a civil war" which appears at page 167 of the History of the Communist Party of the Soviet Union, which is Government's Exhibit 30?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: That has not been covered by this witness as to this inquiry. It is absolutely new. It does not constitute any repetition whatsoever. I

—Tr. Tr. 6844—

went through the record and I make that representation to the Court.

The Court: Go ahead. Go ahead.

Q. Mr. Gates, referring to this expression "converting the imperialist war into civil war," from your participation in the practices of the Communist Party, as you have

testified, and from your relationships with these defendants such as you have testified here and bearing in mind the other circumstances that you have described in your testimony, what did this expression "converting the imperialist war into civil war" mean to you during the period covered by the indictment?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. Sacher: May I point out, your Honor, that I have used the exact words of a question that you yourself put to the witness Budenz?

Mr. Gladstein: If the Court doesn't desire to answer Mr. Sacher's question I would like to ask the Court a question. Is it to be the rule, your Honor, that the jury is to hear only from the Government witnesses as to what they understood documents or teachings to mean, or are the defendants to be allowed to give their state of mind, their beliefs and their intentions?

The Court: I think I see what you are up to. You

—Tr. Tr. 6845—

have had a good rest, and you are right back here because of that.

Mr. Gladstein: I assign those remarks as improper, unwarranted and misconduct.

The Court: That is all right.

Mr. Gladstein: And I ask the Court to please stick to the point that is a very vital point to the defense.

The Court: I don't intend to get into any discussion or argument with you at all, Mr. Gladstein.

* * * * *

—Tr. Tr. 6884—

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Q. Paragraph 9 of the indictment reads:

"It was further a part of said conspiracy that said defendants would publish and circulate, and cause to be published and circulated, books, articles,

—Tr. Tr. 6885—

magazines, and newspapers advocating the principles of Marxism-Leninism."

I ask you whether you as editor in chief of the Daily Worker, or otherwise, have participated in the publication or circulation of books, articles, magazines or newspapers advocating the principles of Marxism-Leninism?

—Tr. Tr. 6885—

A. I have circulated the works of Marxism-Leninism, which do not advocate the overthrow of the United States Government by force and violence.

Mr. McGohey: That is clearly not answering the question, your Honor.

The Court: Yes, but I will let it stand for what it is worth.

Mr. Gladstein: Just one moment. I ask that the last portion of the Court's remark be stricken and that the jury be admonished to disregard the statement "for what it is worth."

Now your Honor made a statement yesterday that I also want to assign as judicial misconduct. It appears at page 6744. Mr. Gates was testifying and your Honor said, "Maybe that is the catch in it."

And then when the witness turned to you—I can imagine the feeling that he had—and he said, "The catch in what, sir?"—your Honor said, "As to how you figured that out."

—Tr. Tr. 6886—

I assign that as prejudicial misconduct and I ask your Honor to instruct the jury to disregard that statement by the Court and also the present statement in which your Honor belittles the testimony by saying you allow it to remain in for what it is worth.

The Court: I see you came back after a long rest determined to be provocative.

Mr. Gladstein: I had no rest. I was working on this case.

The Court: You can be just as provocative, you can be just as unruly as you choose. You know, you have tried it so often and found that it is unavailing. Now go ahead and do as you like.

Mr. Gladstein: All I ask the Court to do, if the witness's answer is correct and legally belongs in the case, is to overrule the objection. If the witness's answer ought to be stricken, then by all means strike it. But don't say, for heaven's sake, that you let the testimony stand for what it is worth. That is the point of my objection.

The Court: You know, this "for heaven's sake," what is the use of bringing that in? I suppose it has to come in. I overrule the objection and deny the series of motions you have made.

—Tr. Tr. 6891—

Mr. Sacher: I offer Defendants' Exhibit 6 x E for identification in evidence (handing to Mr. McGohey).

(Mr. McGohey examines exhibit.)

Mr. Sacher: May it please the Court, I have another exhibit of a similar sort that I was going to offer, and it occurs to me—

The Court: Are they answers by Foster?

Mr. Sacher: No, the others are by Mr. Dennis.

The Court: What is that?

Mr. Sacher: The others are by Mr. Dennis that I intend to offer, and it just occurred to me that rather than have everyone sit around and wait while the prosecution is examining them I could have the others marked for identification and later lay the foundation for them and give the prosecution a chance.

The Court: I think that may be done.

Do you have any objection, Mr. McGohey?

Mr. McGohey: No, but I do not think it is necessary to do that while we sit around because I am prepared now to object to this (handing to Court)—and I do object.

The Court: I directed the taking of the deposition of answers by Mr. Foster.

Mr. Sacher: This has nothing to do with this. This was published in January 1948, your Honor.

—Tr. Tr. 6892—

The Court: Well, I will sustain the objection.

Mr. Gladstein: Let the record show that that was done without even examining the contents.

The Court: You can make any statement you care to, Mr. Gladstein. I find that refraining from argument with you leaves me more peace of mind.

Mr. Sacher: Now if it please the Court, I should like to make separate offers of some of these questions that we believe to be relevant and pertinent.

The Court: Well, they may be considered as offered sentence by sentence and word for word, and if objected to I will sustain the objection.

Mr. McGohey: The Government states that it will object to each and every sentence, each and every word, each and every question and each and every answer contained in the exhibit marked 6 x E for identification.

The Court: Very well. I will rule as indicated, so you need not make the separate offer by paragraphs.

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—Tr. Tr. 6906—

Cross Examination by Mr. McGohey:

Q. Mr. Gates, I think you testified yesterday, or during your testimony yesterday, that you had studied about the reorganization of the Communist Party of the United States while you were in the Army? A. No, I said when I returned from the Army I had made a study of it. That is what I testified yesterday.

Mr. Gordon: What is the page?

Mr. McGohey: 6381, I think it is—6831.

Q. Mr. Gates, reading from the transcript—

Mr. McGohey: At page 6831, Mr. Sacher.

Q. —there appears the following:

"The Court: Did you understand that as soon as you heard about this reconstitution of the Party or is this something recent?

"The Witness: I am stating I understood this as a result of all the study I did all the time I had been away in the Army."

Did you make that answer, Mr. Gates? A. If it says that, I must have said it,—

Q. Now, Mr. Gates,— A. —but I don't recall it in that way.

Mr. Sacher: Just a moment, just a moment. I submit the witness has a right to explain what he said.

The Court: Let him go ahead and explain it.

—Tr. Tr. 6907—

Mr. Sacher: O.K.

Mr. McGohey: That is right.

The Court: What is the explanation?

Mr. McGohey: I was just going to help him by reading what follows, but maybe, if the witness doesn't desire—

The Court: Maybe he would like to explain first before he knows what he has to explain.

Mr. Gladstein: There is no occasion to argue the question back and forth.

The Court: Thank you for helping me. You always seem so eager to tell me just what to do. I appreciate that.

Gates—Cross
Colloquy

Mr. Gladstein: I am delighted your Honor is appreciative of it because—

The Court: Yes.

Mr. Gladstein: —all I try to do is to suggest the principles of law when I rise.

The Court: What principle of law is applicable here?

Mr. Gladstein: Well, there was one this morning which your Honor recognized, in fact conceded acknowledgment of the fact that it was elementary. This one is simply this: the witness has a right, if he wants to, to explain an answer, but he isn't asked

—Tr. Tr. 6908—

for that and there is no occasion for the Court to suggest by way of colloquy with the U. S. Attorney anything by way of innuendo. That is what I am objecting to in the last remark.

The Court: There is an innuendo there?

Mr. Gladstein: Yes, and it isn't the first time.

The Court: And just what is the innuendo?

Mr. Gladstein: And it isn't the first time.

The Court: You are positively insulting, Mr. Gladstein, but I see that you do it in a way that is calculated, and I suppose I had better overlook it, but I must say I should think you would give it up,—

Mr. Gladstein: I deny it—

The Court: —because it isn't working.

Mr. Gladstein: I deny the statement of the Court. I object to the remarks.

* * * * *

—Tr. Tr. 6914—

Q. You say when you came back you visited the headquarters of the Communist Party here in New York City and were then for the first time officially informed that you had been elected to the Committee? A. That is correct.

Q. Who was it that gave you this official information? A. Mr. Eugene Dennis.

Q. Do you know what position he occupied in the Party at that time?

Mr. Sacher: I object to that as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Gladstein: Your Honor, may I suggest that this happens to be the question, if I heard it correctly, that your Honor has had occasion to castigate a couple of times in the course of this case. I think you said that was the stupidest type of question and very unfair to the witness that was here.

The Court: I don't know what I am going to do with you, Mr. Gladstein. It is a problem.

—Tr. Tr. 6915—

Mr. Gladstein: It is just the form of question your Honor said that—

The Court: I suppose—

Mr. Gladstein: I am willing to show you places in the record—

The Court: I suppose—

Mr. Gladstein: —where you have said that kind of question ought not to be asked.

The Court: Well, I suppose—

Mr. Gladstein: I will submit a brief.

The Court: —I have to endure these little interruptions every once in a while.

To get our minds on what the question was, will you read the question?

Mr. Gladstein: I object to those remarks and assign them as improper.

The Court: Very well.

(Question read, as follows:)

"Q. Do you know what position he occupied in the Party at that time?"

The Court: That is Eugene Dennis?

(The reporter read preceding question and answer.)

A. I do.

Q. Will you tell us what it was? A. I am ready to tell

—Tr. Tr. 6916—

you what I was at that time.

Mr. McGohey: If the Court please—

The Court: Wait a minute. Let us see what he has to say. I am a little puzzled at this.

A. (Continuing) But I don't want to testify here as to what my fellow comrades were who are on trial here. It is a matter of public knowledge as to what position Mr. Dennis occupied at that time. It has never been concealed. It has always been made public. It has been placed in evidence here as to what position Mr. Dennis occupied, but

I am not going to become a stool pigeon and finger my comrades in this case for the purposes of the prosecution.

The Court: Strike that answer out.

Now, answer the question.

—Tr. Tr. 6917—

Mr. Gladstein: I submit the question has been answered and I ask the Court at least to advise the witness that he has a right to insist on the answer that has been given.

The Court: Now let's see. Are you Mr. Gates' attorney? I thought Mr. Sacher was.

Mr. Sacher: Yes, your Honor, I am Mr. Gates' attorney. There is no reason for your Honor to be theatrical about it.

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—Tr. Tr. 6926—

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Mr. Crockett: In your remarks you have emphasized that in the ordinary case it is perfectly normal for a witness to be asked who was a certain individual. The thing I am trying to impress upon the Court is that this is not the ordinary case. If your Honor will be patient I think I can develop that in a few sentences, and I will do it this way:

The answer to that question not only identifies the position which Mr. Dennis may have held in the Communist Party, it also identifies Mr. Dennis as

—Tr. Tr. 6927—

a member of the Communist Party. So in effect what the prosecution is asking this witness to do

is to testify as to Mr. Dennis's membership in the Party. It might very well not be Mr. Dennis; it might very well be any other person as to whom the prosecution might ask whether he is a member of the Party and so on.

The Court: You mean to say that all the witnesses are going to refuse to answer those questions?

Mr. Crockett: I can't anticipate what witnesses will do when they get on the stand.

The Court: If this objection were sustained we just would have the defendants and the witnesses of the defendants testifying to what they chose to testify and refusing to testify to anything else just as you lawyers did in the early part of the proceedings. You refused to answer my questions.

Mr. Gladstein: That is objected to.

The Court: Object away. There is no jury present.

Mr. Gladstein: I assign that as judicial misconduct. I object very seriously and I assign it as prejudice and bias of the Court.

The Court: You did refuse to answer questions when I put them to you and your colleagues again and again. What is the use of making out you didn't do it?

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—Tr. Tr. 6946—

. . . . . .

Q. National Veterans Committee? A. Yes.

Q. Were there other members of that committee besides yourself? A. There were.

Q. And how many? A. Oh, it varied greatly from time to time. I cannot recall exactly now.

Q. At the time you assumed the directorship, how many were there? A. I should say somewhere between five and ten.

Q. Will you tell us who they were?

Mr. Sacher: I object to that, your Honor.

The Court: Overruled.

Mr. Gladstein: If your Honor please, may we be heard on this? If this has to do with the defendants, each and all of whom have stated that they volunteer to state for the record all the positions they have held during the period covered by the indictment, what they have been in the Communist Party, that is one thing. It certainly can have no place in this case at all for Mr. McGohey to seek to ascertain the names of other persons not here on trial because the very naming of those persons would possibly subject those persons to prosecution or persecution. I see no possible competency or relevancy to that question, your Honor.

The Court: I will hear from Mr. McGohey as to that.

—Tr. Fr. 6947—

Mr. Gladstein: Very well.

Mr. McGohey: If the Court please, this man is testifying and has testified that he was a member of the National Committee—certainly at this time about which I am inquiring now—and he says that he was the director of a committee of the Communist Party that had certain obligations or certain duties

to the Party with respect to its handling of veterans' affairs. I submit that I am entitled to question all of his activities in connection with that because he did whatever he did there as a member of the national staff of the Communist Party. One of the things I am entitled to inquire about is how many people worked with him, what he did, and what they did, and who they were.

Mr. Sacher: If it please the Court, I have—

The Court: Just a moment, Mr. Sacher.

Mr. McGohey: If for no other reason, your Honor—

The Court: Are these—

Mr. McGohey: —if for no other reason than on the issue of credibility.

The Court: Do these people on this Veterans Committee have anything to do with the maintenance of these schools that has been testified to, Mr. McGohey?

Mr. McGohey: I beg your pardon, sir?

—Tr. Tr. 6948—

The Court: Do these members of the Veterans Committee have anything to do with the teaching in these schools that we have been hearing about from the witnesses?

Mr. McGohey: Well, I don't know, your Honor, but I think I am entitled to inquire whether they did.

The Court: Of course, the defense in negating the, or claiming that they negated the claims of the prosecution have gone rather fully into this veterans matter, have they not?

Mr. McGohey: Yes, indeed.

Mr. Sacher: I would like to be heard before your Honor rules, if I may.

The Court: You know, Mr. Sacher, this argument business gets interminable in this case.

Mr. Sacher: I promise to be very brief.

The Court: It seems as though one never were to assume that the Judge has any knowledge of anything, and then we get into these arguments, and they seem so largely extra legal.

Mr. Sacher: I intend to confine myself—

The Court: I will hear you briefly on it. What is it you want to say?

Mr. Sacher: The point I wish to make is that we have no objection whatever to the fullest exploration of whatever Mr. Gates did from the time he was

—Tr. Tr. 6949—

born up to the present time.

The Court: But you don't want him to mention anybody else.

Mr. Sacher: No, the point is that, for the reasons that we have advanced, mentioned by Mr. Gladstein, we think that the request for him to identify other people is utterly irrelevant and can only result in possible injury to those people. If it doesn't further the matters to be established by the prosecution, then I respectfully submit that Mr. McGohey's reiteration, "I am entitled to have it," and suggesting that credibility is at issue as the basis of this inquiry, does not constitute a sufficient ground. Mr. Gates has testified for six or more days and I respectfully submit that if there is anything in his

testimony the credibility of which can be successfully assailed, I invite Mr. McGohey to do it, but let us concern ourselves—

The Court: With that invitation, I will overrule the objection.

Mr. Sacher: —with what Mr. Gates did, not with what other people did, because it is Mr. Gates who is on trial and not other people.

The Court: I will overrule the objection. Go ahead.

Mr. Crockett: If the Court please, I ask that the

—Tr. Tr. 6950—

Court reconsider that in the light of the previous suggestion by your Honor that you would like to have briefs filed tomorrow morning before 10 o'clock. I submit that there is law that supports the proposition that Mr. Gates would be within his rights in refusing to answer such a question and that we are within our right in objecting to the prosecutor putting such a question, calling for these names. And I have a further suggestion—

The Court: I heard that, I heard that. You don't have to say it three or four times.

Mr. Crockett: No, I am not going to repeat that. What I wanted to add is a suggestion—

The Court: All right.

Mr. Crockett: —that Mr. McGohey might very well go to another question and tomorrow—

The Court: That is just what I was about to say, but you want to say it.

Mr. McGohey, why isn't it practical, until I have had time to consider such authorities as they sub-

mit, that you go to some other subject and take up the matter again at that point in the morning?

Mr. McGohey: Very glad to do that, your Honor.

By Mr. McGohey:

Q. Do you still hold the position as director of veterans' —Tr. Tr. 6951— affairs? A. I do not.

Q. Who holds that position now?

Mr. Gladstein: Same objection, your Honor, as before, unless it is a defendant on trial, and I submit that the question should be withheld pending—

The Court: It is becoming pretty obvious to me that you cannot try this case with defendants saying what they want to tell and what they don't want to tell, and what questions they want to answer and what ones they don't.

Mr. Gladstein: No, your Honor, that isn't it. It is only the same question. It isn't a series of questions. It is only one question involved and that is whether it is right to ask this man to identify other persons who are not involved in this case, in such a manner that tomorrow they might be indicted merely because they were engaged in political activity.

The Court: I have heard that again and again. Let us not repeat it. If there ever was a case in the world which had as much repetition as there is in this case, I don't know when it was.

Mr. McGohey: Does your Honor desire that that question be—

Gates—Cross
Colloquy

The Court: I desire, Mr. McGohey, that you wait until after I have studied what authorities may be
—Tr. Tr. 6952—
submitted to me in the morning before you ask Mr. Gates questions about who the persons were that were connected with the activities of the Party in one way or another; but if you find it difficult to do that, why, then, we can put it off but, I think, perhaps you can go to other matters that will not involve such questions, and then I will rule on it after I have studied what the defendant submit to me.

Mr. McGohey: Well, if the Court please, it is now 4.15. I have prepared my cross-examination along the lines that I have been proceeding on and it would throw it completely out of joint for me to make a switch now.

The Court: Very well.

Mr. McGohey: I would prefer to go along this line after the Court has ruled on it.

The Court: All right.

Mr. McGohey: And then I can eliminate, if necessary, in accordance with the Court's ruling, a whole line of cross-examination.

The Court: Very well.

* * * * * *

—Tr. Tr. 6954—

New York, June 3, 1949

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Cross Examination by Mr. McGohey (Continued):

Q. Mr. Gates, you will recall that yesterday afternoon I asked you this question:

"You were the Veterans Director?"

And you answered "Yes." And then,

"As Veterans Director were you in charge of any commission?

"Yes.

"What was the name of that commission?"

And you answered,

—Tr. Tr. 6955—

"The National Veterans Committee." I said, "National Veterans Committee?" You said, "Yes.

"Were there other members of that committee besides yourself?

"There were.

"And how many?

"Oh, it varied greatly from time to time. I cannot recall exactly now."

Then I asked this question:

"At the time you assumed the directorship, how many were there?

"I should say somewhere between five and ten."

And then I asked this question:

"Will you tell us who they were?"

And then there was a discussion and that question was not answered.

I now repeat that question to you, Mr. Gates; will you tell us who were the members of the Veterans—the National Veterans Committee at the time you assumed the directorship of that committee?

Mr. Sacher: I object to that question.

The Court: Objection overruled.

—Tr. Tr. 6956—

Mr. Crockett: I should like, with the Court's permission, to be heard very briefly in support of the objection.

The Court: I don't want to hear any argument at this stage.

Mr. Isserman: If the Court please, I would like to state the grounds for the objection.

The Court: I do not desire to hear them. You know, I have had the brief, rather lengthy brief, which I have studied with very considerable care. I have given this matter a great deal of study overnight, and I have heard considerable argument of counsel in my chambers this morning. I do not feel that I need to hear anything further now as to the materiality and relevancy of the question.

* * * * *

Gates—Cross
Colloquy

—Tr. Tr. 6958—

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Mr. Crockett: The argument I wish to address to the Court is not included in the memorandum that was presented to the Court.

The Court: Well, I will hear you briefly.

—Tr. Tr. 6959—

Mr. Crockett: I am particularly anxious to address the Court on this subject because I am mindful that if the abolitionist of another day had not taken the same position as Mr. Gates has taken today, I probably would be a slave instead of a free American citizen.

And I think it is recognized, and it is a matter of common knowledge, that racial, religious and political prejudice does exist in the United States and that various minority groups are victims of such prejudice. The fact that we have pending in the Congress today an FEPC Bill, the fact that the President has seen fit to issue an Executive Order to the armed forces, confirms that basic fact, that there is prejudice against minority groups. It is also well known, and I think the Court might judicially notice, that members of minority groups frequently escape economic, social, political and other evil consequences of this prejudice by either passing as white, when they are really Negroes, by changing their names, spelling or pronunciation, or changing their ancestral religious affiliation, or their dress, or refusing to reveal their political identity. There are those of us who may be—

The Court: This argument is designed to convince me that the question put to the witness is material

—Tr. Tr. 6960—

and relevant?

Mr. Crockett: Not that it is material and relevant but that it is improper.

The Court: Well, that it is not material and relevant.

Mr. Crockett: That is right.

The Court: I don't quite see the bearing of what you say to the subject matter but, however,—

Mr. Crockett: There may be those of us who are possessed of a little more moral fortitude and, hence, are proud to disclose our race or our religious background, or our political connections, and we may even disapprove of concealment of these facts on the part of others.

The Court: Is this an argument for the benefit of the jury or for me?

Mr. Crockett: Not for the benefit of the jury but for your benefit.

The Court: I see.

Mr. Crockett: But our disapproval of such concealment is only slightly less than our repugnance at those who violate their fellow citizens' right to privacy and the right to remain silent.

This principle which I am advocating is recognized in our law. For example, our law books look with extreme disfavor—displeasure, rather,—upon a doc-

—Tr. Tr. 6961—

tor or a lawyer or a priest who betrays the confidence of his patient.

Gates—Cross
Colloquy

The Court: I will hear you no further, Mr. Crockett. It was just what I was afraid you were going to do.

Mr. Crockett: What I am arguing for is a recognition—

The Court: I will not hear you any more. I do not desire to hear anything further.

Mr. Crockett: I am asking for the privilege of referring to religious affiliation—

The Court: Mr. Crockett, I don't desire to hear anything further. I overrule the objection.

Mr. Gladstein: Will your Honor then instruct the witness as to his rights under the First, Fourth, Fifth and Tenth Amendments of the Constitution of the United States to refuse to place himself in the same position, degrading himself, that other people willingly—

The Court: He has conferred—

Mr. Gladstein: —willingly took—

The Court: —with his counsel.

Mr. Gladstein: —if your Honor please—

The Court: I will not hear more.

Mr. Gladstein: —when the Government placed informers and stool pigeons on the stand.

Will you be good enough to advise the witness.

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—Tr. Tr. 6970—

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Defendant Dennis: I would like to call to the attention of the Court that to give any information

would be not only to transgress the inalienable rights of the defendants, of the members of our Party, but would be to put anyone mentioned by Mr. Gates in a position where he would only be subject to lynching in the South. And I say that this line of question, among other things, is an un-American effort to infringe on our basic rights and to try and compel the defendants to act as police, as FBI informers; and I would say that if the Court accedes to the request of the prosecution and if it does not sustain our objections, that this would be a violation of the traditions embodied in our Bill of Rights, this would be acting in the traditions of Edgar Hoover and Herr Himmler because such rulings could only be conceived and executed in the spirit of a police state inquisition.

The Court: I think I have heard about enough, Mr. Dennis.

Defendant Dennis: I would say in conclusion, your Honor, that no court or no legislative body can kill ideas, political doctrines, movements of the people, such as the Communist movement. They can't do

—Tr. Tr. 6971—

that by force whatever the form of compulsion. And similarly no court by force or compulsion—

The Court: I would rather not hear any more, Mr. Dennis.

Defendant Dennis: —can compel any Communist or any reputable working—

The Court: Don't you think it would be better—

Defendant Dennis: —to bear false testimony and act as an informer against his associates.

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Gates—Cross
Colloquy

—Tr. Tr. 6973—

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The Court: Now Mr. Gates, pursuant to the authority vested in me by Title 18 of the United States Code, Section 401, which reads as follows,

"Power of Court. A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none other, as—"

and then the 3rd subdivision reads

"Disobedience or resistance to its lawful writ, process, order, rule, decree, or command"

I now adjudge you guilty of a wilful and deliberate contempt, and by reason thereof I sentence you as follows:

You are to be remanded until you have purged yourself of your contempt for a period not to exceed 30 days.

(The defendants stand in the courtroom.)

Defendant Winston: If your Honor please, may I now be heard? More than 5000 Negroes have been lynched in this country for such—

—Tr. Tr. 6974—

The Court: Now, Mr. Winston—

Defendant Winston: —and the Government of the United States should be ashamed for bringing in such monstrosity.

The Court: Mr. Winston, I hereby direct that you be remanded for the remainder of the trial.

Defendant Hall: It sounds more like a kangaroo

court than a court of the United States. I have heard more law and more law and more constitutional rights in kangaroo courts.

The Court: Now let me see, this is Mr. Hall—

Defendant Hall: That is right, this is Mr. Hall.

The Court: Mr. Hall, you are hereby remanded for the balance of the trial.

Mr. Gladstein: If your Honor please, may I ask this, in pronouncing sentence as the Court just did, did the Court consider that the witness had invoked the protection of the Fifth Amendment, or did it consider that the state of the record was such that perhaps technically the witness had not done so? I wish to call Mr. Gates' attention to the fact that he may not have used—

The Court: Don't you think, Mr. Gladstein—

Mr. Gladstein: I beg pardon?

—Tr. Tr. 6975—

The Court: Don't you think it would be prudent if the defendants resumed their seats?

Mr. Gladstein: Well, your Honor, may I first have a ruling on the right of the witness to complete the record of his invocation of his rights under the Fifth Amendment because I think there may be a possibility that he did not in his last answer, although it is clear that he intended to, to invoke that amendment, and I desire to have the record corrected to that extent and to advise the witness, and I think the Court should corroborate it, and under the Fifth Amendment to the Constitution he has a right to state from the witness stand that he declines to

answer a particular question upon the ground that it may tend to degrade or incriminate him?

The Court: Your objection is overruled.

Mr. Gladstein: Well, may we have the record clear, your Honor, that whatever the determination or disposition of the Court may be, it is deemed that the witness has invoked that right of his under the Fifth Amendment?

The Court: I will make no further direction.

Mr. Gladstein: Well, may I say to Mr. Gates now that he should state for the record in open court that he does invoke that protection and he wishes that to be considered by the Court prior to pronounc-

—Tr. Tr. 6976—

ing any disposition or judgment of contempt.

The Court: I have pronounced the sentence.

Mr. Sacher: I should like to say, your Honor, that I regard the record as stating very clearly and adequately by both Mr. Gates himself and by myself that he did invoke both the First and Fifth Amendments prior to the imposition of any sentence by your Honor.

The Court: You might be interested in my reading from my notes here. I understood him—

Well, perhaps I had better not read from my notes. It will perhaps just lead to further argument and the record stands as it is.

The Witness: I did invoke those two Amendments.

Mr. Isserman: If your Honor please, the answer should be read to Mr. Gates so, that he can judge whether he completed it or not.

The Court: He can purge himself, at any time

under the sentence that I have given him; otherwise the sentence stands.

Defendant Dennis: I wish to protest most emphatically this outrageous decision on the part of the Court. I must say all honest men must view this action of demanding as a contemptible action, a violation of our traditions and our Bill of Rights—

The Court: I shall treat you, Mr. Dennis, as one

—Tr. Tr. 6977—

of the counsel, as indeed you are, and I have tried to stick to my determination that I shall not do anything to counsel. They may do whatever they choose and take the consequences in due time. I do not state that as a guarantee that I will not take some action against you if you become too disorderly, but I speak as I have because I want you to realize that I understand the character of the expression which you have just used, but I will take no action on it.

Defendant Dennis: I wish the Court to know that I seek no special rights or privileges, but the rights I exercise—

The Court: I think I understand your position pretty well.

Defendant Dennis: My inalienable rights as an American citizen, as an American worker, as a Communist, whether I—

The Court: If you desire to add something further you may do so, Mr. Dennis.

Defendant Dennis: Well, first I would like to urge upon my co-defendants that they at this time do not speak—they can act as they see fit. I urge them not to call for any provocation.

(Defendants sit down.)

Mr. Isserman: If the Court please, from my con-

—Tr. Tr. 6978—

sultation with Mr. Gates this morning I know that he has not, and as I heard his claim of privilege, stated it as he wanted to state it this morning. I don't think the Court should act under a misapprehension or a mistaken statement by a defendant who is not versed in the law; I think Mr. Gates should be given an opportunity to state the privilege that I know, from talking to him, that he intended to claim, particularly in regard to self-incrimination.

The Court: Well, I think that Mr. Gates' situation is now closed and we will have the jury back and resume the trial.

Mr. Sacher: I should like at this time to request—

The Court: (To Bailiff) Just a second.

Mr. Sacher: —to request of the Court a stay of your Honor's order pending an opportunity to apply to the Circuit Court of Appeals for a stay or a reversal.

The Court: I will grant no such stay.

Mr. McCabe: If your Honor please, I ask that your Honor revoke your Honor's order with regard to the defendant Winston because of utterances made by the defendant Winston. The utterances were made under provocations which should stem not only

—Tr. Tr. 6979—

from the history of this trial but from the history of this country, the history of persecution of minority races antedating the founding of this country—

The Court: Now, Mr. McCabe, I have in this case throughout attempted in every way to be patient,

never to take a hasty step without careful consideration. I have pursued a policy of gradually reducing the disorder here by ample warnings; and only a few days ago, after having heard outbursts by several of the defendants I had occasion, when there were some comments made by the defendant Davis, to state in very plain and unequivocal terms that if there was any further disorder by any of the defendants I should remand them. There was further disorder, and I have remanded those who caused the disorder. The other matter will rest, and I hope that the remainder of the trial may proceed without a repetition.

Mr. McCabe: May I add, then, your Honor, that I do not accept in any way the strictures your Honor has directed, either towards the defendants or to counsel. I say that your Honor has not remanded the persons who caused the disorder because the defendants did not cause the disorder. I say that the reason counsel—I am speaking for myself now—the reason that I have perhaps not made similar utterances is simply because of my greater training to restrain myself under great provocation.

—Tr. Tr. 6980—

The Court: Well, you have been impudent enough to me on numerous occasions, and were it not for the fact that I have determined that this trial shall not be disrupted by such things I should have taken action against you and against each of your colleagues long before this, but I shall not do it. I shall leave that to the proper authorities to take care of in due course, and there it shall rest, but you need

be under no misapprehension; I have been quite fully cognizant of your contemptuous conduct and your impudence.

Defendant Winter: Your Honor, may I—

Mr. McCabe: I deny the imputation of impudence or misconduct. I am perfectly willing to answer to any proper body for any actions of mine in this courtroom or out.

The Court: Do you remember, Mr. McCabe, the date when you accused me of doing certain things just so that the reporters could meet the deadline for the press? Do you remember that occasion?

Mr. McCabe: Yes, I recall it quite well.

The Court: You thought what you said then was entirely proper, no doubt.

Mr. McCabe: I thought it was accurate.

The Court: Well, yes, I thought it was contemptuous. Now I just mention that so that you may not

—Tr. Tr. 6980a—

suppose that I am not aware of the precise incidents that I speak of.

Now I think we had better go on with the trial before you make your situation any worse.

Mr. Sacher: May I request a brief recess, your Honor?

The Court: Yes. We will take a ten-minute recess.

(Short recess.)

Gates—Cross
Colloquy

—Tr. Tr. 6981—

(The jury returned to the courtroom.)

(The witness resumed the witness chair.)

The Witness: Your Honor, I would like to say for the record that I thought I made the statement, but if I did not I would like to make sure that the record contains the statement that I did not answer the question on the ground of my privileges under the First and Fifth Amendments, on the ground that it would tend to degrade and incriminate me.

Mr. Gladstein: Now, if your Honor please, I wish to make a motion that the Court revoke and withdraw the order and announcement made before the recess remanding my client, Mr. Hall, for the duration of this trial into custody, and I assert first that the finding is improper.

The Court: The jury may be excused again.

(The jury left the courtroom at 12.07 p.m.)

Mr. Gladstein: If the Court please, there are five or six grounds upon which I ask the Court to withdraw and vacate the order which was orally made just before the recess pronouncing Mr. Hall in contempt and imposing upon him, as I understand it, the sentence that he be remanded to the custody of the jailers and remain in that custody for the duration of this trial.

I assert in support of my motion first, that it is obvious from the circumstances and from the con-

—Tr. Tr. 6982—

tents of the words used by Mr. Hall that there was no intention to commit any contempt of court.

Secondly, I assert and submit that the words used and the circumstances under which they were used were occasioned by a situation provoking that occurrence and stemming directly from rulings of the Court and from proceedings had immediately prior theret.

Third, I submit that the actual words used by Mr. Hall do not and cannot by the farthest stretch of the imagination constitute a contempt of the Court.

Fourth, I submit that nothing that Mr. Hall said or did either in fact or with any degree of possibility could have been intended to accomplish, nor did it accomplish any imemdiate interference with the judicial processes.

Fifth, I assert that the penalty which the Court has imposed interferes seriously to the prejudice of the rights of Mr. Hall with his defense, with a fair trial, interferes with his right to and opportunity to secure adequate legal representation inasmuch as the sentence of the Court places obstacles and difficulties that can have no other effect than to impair the possibility of his receiving legal assistance, counsel and advice in the preparation of his defense in this case.

And finally, I submit, your Honor, that the extent of the sentence which your Honor has imposed is

—Tr. Tr. 6983—

completely out of line with the incident that oc-

curred. Not only is it, I submit, indefensible for the Court to have made that finding, but having made the finding I submit it is a very unique, unusual and extreme penalty to impose in all the circumstances of this case upon the defendant Hall.

And I would finally urge this: what we have been witnessing this morning is something that is deeper in the hearts and minds of men who have the convictions that these defendants have, than apparently the Court can understand.

The Court: You have in mind the background and what has been happening these past months?

Mr. Gladstein: I have in mind 300 years of background. I have in mind that those who founded this country did so in part because they had to leave England because there was the kind of political persecution which we are witnessing in our country today, and I know from the history books that the ecclesiastical courts for religious purposes and the star chamber for political purposes were used precisely the way this court is sought to be used, namely, as a grand jury inquisition, as subterfuges by which to extract from witnesses on the stand the names of others who might be intimidated into becoming witnesses against them.

—Tr. Tr. 6984—

The Court: Proceedings in the District Court of the United States while I am presiding will be as orderly and free from misbehavior as I can make them.

Mr. Gladstein: Your Honor, we desire to and we have attempted to be orderly and we want—

The Court: Attempted to be orderly?

Mr. Gladstein: If your Honor please, I submit that the expression that is provoked from a man should be measured in the light of what it is that that expression deals with, and when you touch something as profound as what is involved here, then it is only fair to expect that men will fight for principles that they believe in, principles that represent the very aims of their existence.

The Court: They had better not be disorderly in this court.

Mr. Gladstein: I desire to submit to your Honor that any expression by any of the defendants should be gauged in the light of what is here involved. We are not engaged in something trivial. We are dealing with something that constitutes one of the cornerstones of our very government. I urge the Court to reconsider the ruling it has made against Mr. Hall in the light of what I have submitted, and if the Court will not revoke that order, to suspend it permitting me on behalf of Mr. Hall to submit the matter to the Court of Appeals.

—Tr. Tr. 6985—

The Court: The motion is in all respects denied. Bring the jury back.

Mr. Sacher: Before they come back—

The Court: Don't call them back.

Mr. Sacher:—I wish in the light of the statement made by Mr. Gates since the reconvening of court, your Honor won't reconsider the order which you made committing Mr. Gates.

In that connection I think that it ought to be

pointed out to the Court that recently the Circuit Court of Appeals in this Circuit held that where there is any possibility at all that an answer might expose a witness to possible prosecution that he may lawfully and legitimately invoke the principle that the answer would tend to incriminate and degrade him. I have in mind the Fifth Amendment. Mr. Gates has done so, he has invoked them and I will do so by reference to the statutes, if your Honor wishes.

The Court: I will not change the order.

Mr. Sacher: When all things are balanced, when you have due regard for the questions put by the prosecution, the declination to answer which was the basis of your Honor's order, when you weigh that against the principles which are involved—in other words, when account is taken of the purposes of the prosecution in putting those questions, since the purpose is not to elicit the facts—

—Tr. Tr. 6986—

The Court: I am not going to assume that because you or your colleagues make statements that the truth of those statements is thereby established. You accuse the prosecution of bad faith, evil intentions, and so on. I see no evidence of that.

Mr. Sacher: I say to your Honor that when you bear in mind that the answer, when given, cannot in any way, affect the substantive aspect of Mr. Gates' testimony, when you bear in mind that what is involved in the case cannot conceivably be affected by a yea or a nay or by whom he names—

The Court: No one can tell what will affect the

credibility of a witness in the mind of a juror. His false statement in any particular, or found to be such, however trivial the matter might be, is something no—

Mr. Sacher: That is the danger—

The Court: —one can tell.

Mr. Sacher: —that large political ideas may be decided on the basis of trivia, and I say to your Honor that precisely because of that danger, it is warranted here to ask your Honor not to require this witness to answer, even if there weren't the danger—

The Court: Now, Mr. Sacher—

Mr. Sacher: —that I have referred to.

The Court: I will hear no futher argument from you.

—Tr. Tr. 6987—

Mr. Sacher: Then I desist.

The Court: I now desire to have the jury return.

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—Tr. Tr. 7060—

New York, June 6, 1949

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Mr. Gladstein: Mr. McGohey, would you pardon an interruption?

Mr. McGohey: Yes, certainly.

Mr. Gladstein: I am sorry, I misunderstood the purport of the Court's ruling. I didn't undestand that your Honor was ruling that any impeachment could be offered by the reading of the newspaper ac-

count, no matter what that newspaper might be, and I thought that Mr. McGohey's purpose, in showing the newspaper to the witness, was to use it as a basis for asking him questions so as to determine whether or no anything in that newspaper was relevant to the inquiry, but it now appears that what Mr. McGohey has done has simply been to obtain a ruling whereby he reads to the jury a newspaper account

—Tr. Tr. 7061—

without having asked the witness anything whatsoever about that, thus, I take it, hoping, that is, Mr. McGohey hoping, and with the apparent sanction of the Court, that it will be not until the redirect examination, long after this incident has occurred, that we will be permitted to bring out whatever facts there are that are involved in this matter.

I submit that no newspaper account can possibly ever be used in that manner, and while my objection may be tardy, I trust that your Honor will reconsider this, especially since it all began with the idea of whether or not the masthead of that newspaper read in a certain manner.

—Tr. Tr. 7062—

The Court: Well, you know, Mr. Gladstein, it is very difficult to deal with you because, despite my repeated statements that I did not desire argument when you make an objection you seem to be physically and intellectually incapable of making objections without a lengthy argument. Now I understand your motion, and it is denied.

—Tr. Tr. 7123—

New York, June 7, 1949

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Q. Will you give us the name of any branch that you belonged to during that period?

Mr. Sacher: I object to that, if your Honor please.

The Court: Overruled.

Mr. Sacher: I should like to observe that the defendant is being tried—

The Court: I think the least observation you make, the better, Mr. Sacher.

Mr. Sacher: Well, your Honor, I submit that—

The Court: Don't start shouting at me again.

Mr. Sacher: What is that?

The Court: I say, don't start shouting at me again.

Mr. Sacher: I am not shouting and I resent the filling of the record with statements about my shouting when all I am doing is speaking vigorously, and that, I think, is part of the function of an advocate.

The Court: I think you are one of the most vigorous speakers I have ever heard.

Mr. Sacher: That may be, but I say to your Honor that I resent this trying the defendant for things that came 15 years or 18 years ago, and I sub-

—Tr. Tr. 7124—

mit that what he is being tried for is what is charged in the indictment between the years April 1, 1945, and July 20, 1948, and I also wish to say to your Honor that I don't think—

The Court: You will please desist from further statements now, Mr. Sacher.

Mr. Sacher: Well, I just wish to make this protest—

The Court: You are now proceeding in direct and wilful disobedience of my command.

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—Tr. Tr. 7189—

New York, June 8, 1949

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Mr. Sacher: I represented to your Honor that it had not been inquired into. I said, "That has not been covered by this witness as to this inquiry. It is absolutely new."

The Court: I remember.

Mr. Sacher: I said, "I went through the record and I make that representation to the Court."

And you simply said, "Go ahead. Go ahead."

—Tr. Tr. 7190—

The Court: That's what I said but what I thought was my recollection differed from yours.

Mr. Sacher: Well, there is the record, your Honor.

The Court: I say, there is the record too. Objection overruled.

Mr. Sacher: May I respectfully request that it be indicated what other page in the record there is at which I interrogated the witness concerning this?

The Court: No, I don't intend to take a recess to do that after all the adjournments we have had for various reasons. I don't intend to take an adjourn-

ment to read through five or six hundred pages. I allowed you every opportunity to go into these matters and then you got to repeating, changing a little bit, but the same subject matter again and again so that I finally began sustaining the objections.

Mr. Sacher: I once again represent to the Court that I had not—

The Court: Mr. Sacher, your representations are not impressive.

Mr. Sacher: Well, I respectfully object to that kind of statement.

Mr. Crockett: I want to note an objection to that insulting remark.

—Tr. Tr. 7191—

The Court: To what?

Mr. Crockett: To the insulting remark directed to Mr. Sacher. I ask that the Court direct the jury to disregard it.

The Court: Well, that is just another mark up against you.

Mr. Crockett: I object to that threat coming from the Court.

The Court: You know, when you use the expression "insulting" to the Court it doesn't require a great understanding of the obligations of the bar to realize that that is grossly improper.

Mr. Crockett: I think the record indicates—

The Court: If you do not realize it already perhaps there will come a time when you will.

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—Tr. Tr. 7272—

Furthermore, Mr. Sacher had complained that he had been unable to have an appropriate and adequate interview with his client at the House of Detention over the week end, and one of the specifications in that complaint was that it was necessary to interview his client through a small aperture of some kind which made it difficult if not impossible to pass back and forth exhibits if they were of any size.

Mr. Sacher: No, no, we were not permitted to pass any.

Mr. McGohey: No, I say you were not permitted—no, I don't say that; I say I understand you to say that by reason of the physical condition of the place it is impossible—

Mr. Sacher: I say it is not permitted and it is true.

The Court: That is what Mr. Sacher said.

Mr. McGohey: Regardless of that—

Mr. Sacher: I am offended on these constant aspersions on the veracity of representations that I make. I am an officer of this court and I resent these—

The Court: There was an instance when you deliberately lied to me when they were passing these press releases. You said that they were not and you were caught red-handed.

—Tr. Tr. 7273—

Mr. Sacher: That is the most offensive charge that can be made against an officer of the court. Your Honor knew that that was happening in the

back part of the courtroom and I was unable to see that. That is one of the most offensive things you can do to a lawyer. What has a lawyer got but his honor.

The Court: That is the first thing you did and you were caught red-handed.

Mr. Sacher: That is the most detestable thing I ever heard from a judge. I resent that and I urge that it be expunged from the record.

The Court: You asked me why I wouldn't take your word for anything and I told you. I might enumerate other incidents were I so inclined. You can get just as violent as you want; the fact is I do not take your word for anything.

Mr. Sacher: I will defend my honor as a member of the bar against your Honor or anybody else. I will not accept a denunciation that I am a liar, When the time comes that I don't have the mental capacity to defend my clients on any other basis than lying I will resign from the bar. I think an idiot resorts to lying. I don't have to do it.

The Court: You did it.

We better let these little amenities go. I can see from your belligerent manner if you thought you could, you might physically come up to the bench

—Tr. Tr. 7273-A—

and physically attack me. I know your manner, and it doesn't frighten me in the slightest degree. Let's get back to what we were doing.

—Tr. Tr. 7274—

Defendant Dennis: Do I understand by your Honor's remarks that you now wish to deprive not

only the defendant Gates of his liberty but to deprive him of the right of counsel, as well as the other defendants who are represented—

The Court: No.

Defendant Dennis: —by Mr. Sacher?

The Court: I think you are mistaken in that view, Mr. Dennis.

The Witness: I don't think Mr. Dennis is mistaken because I want to cite some facts for the record. Since last Friday, when you incarcerated me, I haven't been able to see a copy of the transcript. I haven't read the transcript. Since that time I haven't been able to get hold of copies of the History of the CPSU and other exhibits which I knew that the prosecution would cross-examine me on, and I have not in any way, outside of a few talks that I have had with Mr. Sacher, which have been entirely inadequate, an opportunity to prepare for my cross-examination. I haven't had the same opportunities that Mr. McGohey has to look through the transcript and to look through exhibits like the History of the CPSU, which contains hundreds of pages; and others. And, therefore, I say that I am being impeded, despite what Mr. McGohey says and despite what your Honor says, in my defense.

—Tr. Tr. 7275—

The Court: Mr. McGohey—

Mr. Crockett: I wish—

The Court: Oh my, Mr. Crockett. You have something to add?

Mr. Crockett: I have something very important to add. I wish at this time to move for a mistrial

upon the grounds that the Court in its remarks immediately prior to this time has definitely indicated a closed mind with reference to anything that Mr. Sacher might say. The effect of that is to deprive—

The Court: I have a very definite opinion of you, too, Mr. Crockett.

Mr. Crockett: But I am not speaking about Mr. Crockett, and I am fully aware that you probably do have a very definite opinion as to Mr. Crockett.

The Court: But I shall not express it because I see no occasion to do it. I should not have done it to Mr. Sacher, had he not asked me.

Mr. Crockett: I am not speaking about Mr. Crockett.

The Court: Why, I have never been so insulted and baited, nor have I ever heard of any other judge being so insulted and baited, during the trial as I have by you lawyers representing the defendants here in this case from the 17th of January on,

—Tr. Tr. 7276—

and I will make no bones about it. That is what has been going on, and I have tolerated it because of the reasons I have indicated, but make no misunderstanding as to what I think about it.

Mr. McGohey: Your Honor, I wish—

Mr. Crockett: I wish to state the grounds for my motion.

Mr. McGohey: Will you pardon me for just a moment? Because all this developed as an interruption when I was trying to make a report to your Honor.

The Court: Yes.

Gates—Cross
Colloquy

Mr. McGohey: If I can complete that report—

The Court: The motion is denied, Mr. Crockett.

Mr. McGohey: —and if we are not able to do it, I should like to ask to adjourn now because I am very tired.

The Court: Will you see what you can do about giving Mr. Gates every facility consistent with the circumstances?

* * * * *

—Tr. Tr. 7311—

New York, June 9, 1949

* * * * *

Mr. Gladstein: Your Honor, I object to this method of examining, no foundation has been laid that Mr. Gates of his own knowledge within the confines of the strict rules of evidence and proof, which we do not follow here—

The Court: Ah, you do have such a way of expressing yourself.

Mr. Gladstein: Well, it is true. Anybody can read a newspaper and say that Mr. Vishinsky has a certain position or Mr. Byrnes has a certain position or someone else.

The Court: You remember my direction some time ago that if somebody was going to object he may do so, but not argue?

Mr. Gladstein: Yes, I object, but on the ground—

The Court: When you go on to the ground that is where the trouble starts. I can't find any testimony

because there is argument, argument, argument. You object and I overrule your objection. Now go ahead.

. . . . . .

—Tr. Tr. 7330—

. . . . . .

Mr. Sacher: I object to that on the ground that the application is the best evidence.

The Court: Overruled.

Mr. Sacher: This calls for the contents of a written paper.

The Court: He is asking for his recollection as to whether or not—

The Witness: I have already answered that I did not use the name John Gates in that instance. That was the one exception—17 years.

Q. No. My question, Mr. Gates, is did you in that application state that the name that you had consistently used was John Gates?

Mr. Sacher: Now if the Court please, I say this question does call for the contents of a written paper and is not designed to refresh his recollection. Secondly, it creates the impression that the application inquired concerning the consistent use of a name, and I challenge Mr. McGohey to produce any such—

The Court: Mr. Sacher, have you and Mr. Gladstein had an understanding that you would deliberately flaunt my direction that you not argue matters of objection to evidence? Because not only do you

—Tr. Tr. 7331—

both go ahead here in complete disregard of what I have said—have you had some understanding about it?

Mr. Sacher: Not only don't we have any such understanding, your Honor, but I assure you that what I did was unintentional. I have no desire to violate any of the Court's instructions.

Mr. Gladstein: May the record show, your Honor, that I have no understanding with Mr. Sacher or anyone else to deliberately flaunt your Honor's rulings, nor do I personally intend nor have I intended—

The Court: You do it inadvertently, do you?

Mr. Gladstein: I beg your pardon?

The Court: You do it inadvertently every time?

Mr. Gladstein: Your Honor, I submit that I have not flaunted your Honor's rulings.

The Court: You know, it is very easy—and I speak to both of you and your colleagues—it is very easy to do what has been done on numerous questions, ask my leave to state objections and make argument, and where I think that is going to be helpful I have allowed it. Now I hope you will pay a little more attention to it. It doesn't seem to me that it should be necessary for me to do more than speak the way I have, but sometimes people think unless you shout and bang the gavel and make a big noise you don't mean what you say. Now please try

—Tr. Tr. 7332—

to accommodate yourself to my directions.

I will overrule the objection.

* * * * *

—Tr. Tr. 7361—

* * * * *

Q. Now, Mr. Gates, have you ever been convicted of a crime? A. I have testified to two arrests and two convictions on direct examination.

Q. Two convictions— A. What is that?

Q. Two convictions for crime.

—Tr. Tr. 7362—

Mr. Sacher: Just a moment.

A. I am not a lawyer.

Mr. Sacher: Don't ask the witness for a legal conclusion. I do not know whether it is an offense or a misdemeanor in Youngstown, and I object unless the witness knows what the legal import of those offenses is.

The Court: I will permit the witness to continue his answer.

A. (Continuing) I don't know from the point of view of legal terminology whether what I was convicted of is classified as a crime or a misdemeanor or whatever it is. I was convicted, as I testified before on the direct examination, in the year 1933 for making a loud noise, without a permit, in an action, in a demonstration, in a meeting where I tried to speak on behalf of relief and unemployment insurance, and I think that my action—

Mr. McGohey: Now, if your Honor please, I submit that the witness has answered the question sufficiently at this point.

The Witness: No, I haven't; I haven't completed it.

The Court: Well, I should think the answer would have been yes or no.

Will you read the question to me?

Mr. Sacher: No; I take exception to that, your

--Tr. Tr. 7363--

Honor, because there are such things as offenses which do not rise to the import of crime and consequently if that is the kind of thing it is, then I submit—

The Court: Then the witness could say so without all this extraneous explanatory matter that he keeps putting in all the time, that is not responsive.

Mr. Sacher: But I am a lawyer and I don't know because I haven't seen what the law of Ohio provides in regard to that matter.

The Court: I suppose not.

Read the question to the witness.

(Question read as follows: "Now, Mr. Gates, have you ever been convicted of a crime?")

The Court: Have you ever been convicted of a crime? Now what is the answer?

The Witness: I began to answer that by saying I don't know whether that is classified as a crime in Ohio. I don't have the legal knowledge. I did testify—

The Court: Well, I don't want a long explanation.

The Witness: I am not making a long explanation. Let me answer. I did testify on direct examination—why don't you read the transcript? This is repetitious. I testified on the direct examination as to what I was convicted of, and Mr. McGohey knows it very well—

The Court: You are very violent, Mr. Gates, with

—Tr. Tr. 7364—

out the slightest possible justification.

The Witness: Well—

Mr. McGohey: And may the record show, your Honor, that the witness has been shouting when he made that last answer.

The Court: Gesticulating.

Mr. Sacher: May the record show that the witness is being crucified unnecessarily with interrogations to which he has truthfully answered already.

The Court: Mr. Sacher, that remark is wholly improper, and it will be stricken out.

Mr. Crockett: May the record show that this is the fifth day of the witness's imprisonment in jail.

The Court: You will not provoke me into any answer that I may regret later, Mr. Crockett. You and Mr. Sacher and the other lawyers have tried so hard for so many months but I think I can continue calmly.

Mr. Sacher: I object to that. We are the ones who are being injured and we are not being permitted to complain of the injury that is being inflicted on us. I think in the present state of the record, your Honor, it ill becomes anybody here to claim any martyrdom.

Gates—Redirect
Colloquy

The Court: You will please desist from comments of that kind, Mr. Sacher.

. . . . . .

—Tr. Tr. 7374—

. . . . . .

The Court: I see Mr. Sacher smiling.

Mr. Sacher: Your Honor takes awfully good notice about my facial expressions, but when Mr. Gladstein spoke about Mr. Gordon jumping up like a poppinjay you saw nothing.

The Court: Well, you did seem pleased. Now you seem different.

Mr. Sacher: We are under surveillance but you never see anything that the prosecution does.

The Court: That is what you say. It may be because there is nothing done by the prosecution to make it necessary for comment.

I told you some little time ago that I wasn't going to permit you or the other lawyers to get away with anything while I was presiding here and I shall not.

. . . . . .

—Tr. Tr. 7486—

New York, June 14, 1949

. . . . . .

Q. Did you tell the representative of the State Department what your name was?

Mr. McGohey: Objection.

The Court: Sustained.

Q. Did you tell him why you had stated your name to be Isriel Ragenstrich in your passport application?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. McGohey: Now, if your Honor please, I now ask your Honor to instruct Mr. Sacher to desist from this examination.

The Court: Yes. There can be only one purpose, which is not proper; so that you will please desist from asking any further questions about what the representative of the State Department may or may not have asked him.

. . . . . .

New York, June 15, 1949

—Tr. Tr. 7648—

. . . . . .

Mr. Isserman: . . . Now as against the Eudenz testimony, any inference—and I notice your Honor

—Tr. Tr. 7649—

shook his head, indicating that there was no inference—

The Court: Just now?

Mr. Isserman: No, before, as to the Duclos article. I believe, your Honor—

The Court: I have to watch my step here. I wasn't cognizant—

Mr. Isserman: Well, whether your Honor agrees with it or not—

The Court: I wish you would stop talking about my nodding my head, scratching my head and pulling my ears. Why don't you leave that all out? What good does that do?

Mr. Isserman: Well, whether your Honor—

Mr. Crockett: Pardon me one minute. I think it is very important because there are some things that are not made a matter of record on the Court—

The Court: You haven't missed any of them.

Mr. Crockett: —so far as the transcript is concerned. Very frequently I notice in the course of testimony your Honor makes frequent glances over toward the jury or some facial expression that gives the impression, to me at least, that the Court—

The Court: Well, it is funny—

Mr. Crockett: Pardon me. I think that whenever it is so obvious, as it was a while ago, some mention

—Tr. Tr. 7650—

of it should be made so that it will be carried in the record.

The Court: If there is something about my winking at the jury or something of that kind, I am surprised that you did not mention it at the time.

Mr. Crockett: No, I have not noticed a winking yet. If I had I would have mentioned it.

The Court: Well, there isn't much that you have missed, but you may just as well go ahead and get it all down and out of your system. I deny that I have ever done anything of the kind. I wouldn't stoop to such a thing, and I do not see how you lawyers have the effrontery to keep saying so.

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—Tr. Tr. 7892—

New York, June 20, 1949

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Mr. Isserman: It is relevant because, if this is an element of the conspiracy and the testimony has been to the effect that these 12 men got together and influenced a convention to adopt a particular resolution, the fact that there was a democratic procedure in the discussion of the resolutions, that amendments were made, that amendments came from various parts of the country, and were considered—

The Court: Amendments were made and you have already proved they were made. I will sustain the objection.

Mr. Isserman: —and that discussion—

The Court: Well, I don't desire to hear any further argument.

Mr. Isserman: I might say this to your Honor—

The Court: I wish you would refrain from further argument.

Mr. Isserman: I would like to say—I would like to answer a question your Honor asked.

Mr. McGohey: I am going to object to any more summation at this time by Mr. Isserman.

The Court: Yes.

Mr. McGohey: That is all he is doing.

—Tr. Tr. 7892a—

Mr. Isserman: Well, I—

The Court: I don't desire any further argument, Mr. Isserman.

Mr. Isserman: Your Honor has ruled on the objection?

The Court: Yes, I sustained the objection.

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—Tr. Tr. 7940—

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Mr. Isserman: Would the Court take judicial notice at this time that the Smith Act, under which this indictment was drawn, was enacted in June 1940?

The Court: Yes. Wasn't it June 28th? I have some recollection it was.

Mr. McGohey: I didn't get the request, your Honor.

The Court: The request was that I take judicial notice that the Smith Act became law in June 1940. I have some recollection the date was June 28th, but it was June 1940.

Mr. McGohey: Yes.

Mr. Isserman: I think it was June 28th, your Honor.

Q. Now was the section—

Mr. McGohey: Just a second, if you please. Will you excuse me for just a minute here, your Honor?

The Court: Yes.

—Tr. Tr. 7941—

Mr. McGohey: Now will your Honor also take judicial notice of the fact that the Alien Deportation Laws were in effect from about 1917, I think?

I can have the date—I will fix that date precisely.

Mr. Sacher: The which laws?

Mr. McGohey: Deportation Laws, and that they have a similar provision about advocacy of the overthrow of the Government by force and violence.

Mr. Sacher: I object to that, your Honor, on the ground that that has nothing to do with the charges in this case.

The Court: Well, I am not quite sure what the point was of Mr. Isserman's asking me to take judicial notice of that but I don't think that argument is going to help it any, and if what Mr. McGohey asks here should not fit into what you have in mind I can't see that the slightest harm will be done.

Mr. Sacher: The only thing is that we have asked you to take judicial notice of a lot of things that were judicially noticeable and Mr. McGohey now makes the same request and it is taken.

The Court: Judicial notice of when laws of the United States take effect is entirely different from judicial notice of certain historical facts and revolutions in the past.

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—Tr. Tr. 7951—

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The Court: Mr. Green, you are hereby remanded for the balance of the trial.

(Defendant Dennis stands.)

The Court: The jury may be excused.

(The jury left the courtroom at 3.50 p.m.)

(Defendant Dennis sits down.)

Mr. Isserman: If the Court please, I ask the Court to reconsider its ruling—

The Court: I will not.

Mr. Isserman: —in remanding Mr. Green.

The Court: These disorderly outbursts—I will not have it. That is all there is to it.

Mr. Isserman: If your Honor please—

The Court: I have tried here throughout this long

—Tr. Tr. 7952—

trial to be just as patient as I could be, and the one thing that I have told you from the beginning I would not tolerate is disorder in any form here. I have given ample warning, and I just will not have it. I would have to abdicate my function as a Judge here if I were to permit these disorderly outbursts to continue every time one of the defendants felt disposed to criticize me, or the Court.

Mr. Isserman: The outburst, if the Court please, was not disorderly. The document—

The Court: I have already warned this witness three or four times.

Mr. Isserman: The document in question is an important document, it is written by the witness, it expresses his own views and expresses his intent in connection with the indictment under which he is charged. I ask the Court to reconsider the Court's action in remanding him and to allow him to remain at liberty during the period of his testimony.

The Court: No, I will not do so.

Defendant Dennis: May I be heard on this, your Honor?

The Court: Yes.

Defendant Dennis: First, I would like to emphasize the exhibit offered in proof—offered in evidence happens to be something which is more than another

—Tr. Tr. 7953—

article, something more than just an expression of opinion on this and another question. This offer of proof contains an article which Mr. Green and I collaborated on, which goes to the heart of the issues and the charges set forth in the indictment, and it explains most clearly our position and the position of other defendants in respect to democracy, democratic liberties, and it is how we can—how we advocate and teach the ways and means to defend existing democratic liberties, to secure democratic advance in the country, and to pave the way for the attainment of a new system of society, Socialism. Therefore, it is—this exhibit is something which is both dear to us and it happens to be an accurate and a clear presentation of our position; and surely, I think, that anyone could understand, and the Court must understand, the feeling of any witness or of any defendant, and particularly that of Mr. Green, who surely understands, appreciates what is at stake in this effort.

In addition to this, your Honor, it seems to me that the—that your Honor's ruling here is entirely unwarranted and without foundation.

The Court: Well, you see, Mr. Dennis, you don't seem to realize that these defendants, including yourself, are in the same position as parties to other

—Tr. Tr. 7954—

litigation. It is essential to the administration of justice that proceedings be conducted in an orderly way. The amount of disorder, the amount of contemptuous behavior that I have witnessed here in this case is beyond anything that I could have thought possible in an American court, and my lenience, if it may be called that, my desire to gradually bring things to a point where there would be an orderly way have, perhaps, been misunderstood. I intend that there shall be no more of that.

Now, it seems to me a curious circumstance that no matter how many times you and your co-defendants and counsel are warned and told not to do things, why, they keep right on doing them. Now, this witness, Green, for example, I have told him a half a dozen times not to have these outbursts but he seems unable to control himself, and what he said here is, to my mind, completely contemptuous and wrong, and I won't have it. Now, I am running this court not the defendants or their lawyers.

Mr. Isserman: I would remind the Court that the witness has sworn to tell the truth and the whole truth, and I think he should be permitted an opportunity, like other witnesses—

The Court: Well, he had better answer the questions when they are put to him. And, you know, this thing has been gone over, and over, and over.

Green—Direct
Colloquy

—T. Tr. 7955—

You will remember what the defendant Davis did one day here. There is very little difference in degree. And I thought then that I would take the occasion to make a very clear warning, which I did. Now, every time that warning is disobeyed and we have some additional disorder, the consequences will follow.

Defendant Dennis: But this action, your Honor, is, in addition to being totally unwarranted—the ruling of the Court—it surely can have no other effect than to obstruct our case, the presentation of our position. It can only divert from the issues which we are bringing out in the court and to hamstring us and place us in a straitjacket.

The Court: The choice was his. You may go ahead using this same kind of language, and I am going to treat you just as I did the other day, as one of the lawyers here, and when you use such expressions as "hamstringing" and other things of that kind, although you are not a lawyer, you have seen things here and listened, you must know that that language is not proper language to address to the Court; but, however that may be, I think we had better let the matter rest as it is and go on unless some of the rest of the lawyers here desire to add something.

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—Tr. Tr. 8219—

New York, June 22, 1949

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Mr. Isserman: I am really puzzled. When I offer it, it is inadmissible, and the three paragraphs, when Mr. McGohey offers it, are admissible. I just don't understand the rule of evidence at all.

The Court: It is a case of the same thing that we talked about the other day and you cannot seem to get that in your head, and I am not going to tell you again.

Mr. Isserman: One thing I can't understand, your Honor, how it is relevant when Mr. McGohey offers it and not relevant when I offered it three minutes before, the same three paragraphs.

The Court: You see, what a defendant says becomes an admission, admissible by the Government, if it has been proved to have been the utterance of the witness, and he has said that it was. Now, you may not like that law but that is the law applicable in all cases, not just in this one.

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—Tr. Tr. 8266—

New York, June 23, 1949

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Mr. Gladstein: Excuse me, Mr. Isserman.

May I ask if the Court will inquire of Mr. McGohey the ground upon which he objects to the statement that is offered in evidence representing—

The Court: If you look at it, Mr. Gladstein, you will see a number of reasons that are very obvious. I do not intend to direct Mr. McGohey to state the basis of his objection.

Mr. Gladstein: I have read the document and I am frank to say since it constitutes the man's own statement on force and violence that I don't see the point of the objection.

The Court: I don't know how I am ever going to get you to stop this argument. There have been so many times I have told you but you go on just the same. Please don't do any further arguing on this. I have ruled on it.

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—Tr. Tr. 8270—

Mr. Gladstein: I understand, but I ask your Honor whether you will permit the witness to read the document.

The Court: You call it the best evidence and I don't want to get into an argument with you about it, but when a man says he prepared a paper that is step No. 1. He says he prepared a paper and then he says he said so and so. Now I am allowing him to give his recollection as refreshed from the paper of what he says he said over the radio that day.

Mr. Gladstein: It would be so much simpler and proper to have him read what he said.

The Court: I get your point. You are doing your little summing up as you do all the time and talking over my shoulder to the jury and it is what you know you should not do.

Mr. Gladstein: I object to that, your Honor.

The Court: Object all you want, but you do it all the time.

Mr. Gladstein: I object to that remark and I ask your Honor to admonish the jury to disregard it.

The Court: I will not admonish the jury.

Mr. Gladstein: I assign that remark as misconduct.

The Court: Very well.

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—Tr. Tr. 8281—

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Q. Now was that draft which you saw subsequently revised? A. It was.

Q. And when was that? A. After the indictment Mr. Foster expanded on the project in order to relate it to the specific aspects of the indictment in this case.

Q. And was the document published? A. It was published.

Mr. Isserman: I would like to have this marked for identification (handing to clerk).

A. (Continuing) And it was approved by the National Board.

(Marked Defendants' Exhibit 7 x O for identification.)

Mr. McGohey: Could we have that time fixed, your Honor?

The Court: Yes.

(To witness) Do you remember when—you say he finished it up after the indictment, that is, after July 20, 1948, and it was approved by the National Board when?

The Witness: Well, your Honor, there was—at each stage there were—there was approval of the general line embodied in it, and then further additions and proposals made. The draft that was finally published was adopted a couple of months ago.

—Tr. Tr. 8282—

The Court: In this year 1949?
The Witness: That's right.

Q. Was it thereafter published, Mr. Green? A. It was.

Mr. Isserman: I have an extra copy if the Court would desire it (handing to the Court).

Q. Mr. Green, I show you 7 x Q for—

Mr. Isserman: Is it Q? Is it Q?
The Clerk: O.
The Court: 7 x O.

Q. I show you 7 x O for identification, and ask you if that is the statement to which you just had reference (handing)? A. It is.

Q. Does that statement contain the matter concerning which you testified? A. It does.

Q. And does it contain a statement of the development of changes in the Communist Party's position from 1935 to the date of the indictment as you understood those changes, as a member and leader of the Communist Party?

Mr. McGohey: Objection.
The Court: Sustained.

A. It does.

Mr. McGohey: Objection, I move to strike it out.
The Court: Strike it out.

—Tr. Tr. 8283—

Q. Does that statement contain the substance of what you taught and advocated as a leader of the Communist Party from the time you—as a member and leader of the Communist Party from the time you became a member until the time of the indictment?

Mr. McGohey: Objection.
The Court: Sustained.
Mr. Isserman: At this time, if the Court please, I offer Defendants' Exhibit 7 x O for identification in evidence without the first page of the exhibit, without the last page, and without the pictures contained therein (handing to Mr. McGohey).
Mr. McGohey: I object to this document which appears in the Daily Worker for May 23, 1949.
The Court: Objection sustained.
Defendant Dennis: If the Court please, I should like to be heard.
The Court: The jury may be excused.

(The jury leave the courtroom at 12:25 p.m.)

The Court: Yes, Mr. Dennis?
Defendant Dennis: With due respect to the Court's ruling, I submit there is no valid basis, legal, moral or otherwise, for excluding Mr. Foster's statement,